IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.M.JAMES

TUESDAY, THE 27TH FEBRUARY 2007 / 8TH PHALGUNA 1928

CRL.A.No. 1316 of 2006()

AGAINST THE JUDGEMENT/ORDER IN CRLP.311/2006
CC.265/1999 of JUDL. MAGISTRATE OF FIRST CLASS-V, KOZHIKODE

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APPELLANT: COMPLAINANT

ABDUL LATHEEF,S/O.MAMUKOYA,
CHOLAYIL HOUSE,
THIRURANGADI TALUK, KOZHIKODE.

BY ADV. SRI.K.A.SALIL NARAYANAN

RESPONDENTS: ACCUSED & STATE

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1. P.C.AHAMEDKUTTY,S/O.KHADER,
AYYAKARAPADY,PULIKKAL.

2. STATE OF KERALA REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY ADV. SRI.P.V.KUNHIKRISHNAN
BY PUBLIC PROSECUTOR SRI.PUZHAKKARA MUHAMMED.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 27/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.M. JAMES, J.

Criminal Appeal No.1316 of 2006

Dated this the 27th February, 2007.

J U D G M E N T

The complainant in C.C.No.265/1999, on the file of the Judicial First Class Magistrate Court-V, Kozhikode, is the appellant. The complaint preferred by the complainant under Section 138 of the Negotiable Instruments Act, was dismissed for default and the first respondent, accused acquitted. Hence, this appeal after obtaining leave of this Court.

2. During the hearing, it is brought out that the complaint was dismissed on an earlier occasion, and the appellant was before this Court, with an appeal. Accepting the prayer, the dismissal was set aside, and the matter was sent before the court below. This is on the second occasion that both the appellant, as well as the counsel were absent, when the case was called, and that resulted in the dismissal of the complaint.

3. The learned counsel, Sri.Salil Narayanan.K.A., appearing for the appellant, submitted that though the appellant was present before the court below, as the counsel was laid up, there was

no representation. I cannot accept the submission of the learned counsel on its face value. If the counsel had any inconvenience in presenting the matter before any court of law, alternate arrangements ought to have been made, more so, when the complainant was allegedly present, when the case was taken up.

4. I have also heard the learned counsel, Sri.P.V.Kunhikrishnan, appearing for the first respondent, accused. There is a lack of diligence on the part of both the complainant, as well as his Advocate before the court below. But in order to render justice to the parties, the situation demands that an opportunity be given to both sides, as both parties are represented before me, so that the court below can dispose of the same, on merit. But, an order of cost is essential in this matter.

5. In the above circumstances, I set aside the impugned order, dated 3.4.2006, and restore C.C.No. 265/99, on the file of the Judicial First Class Magistrate Court-V, Kozhikode, on condition of the appellant, paying an amount of Rs.2500/= as cost. This amount of Rs.2500/= shall be paid directly, either to the first

respondent, accused, or to his counsel before the court below, within 10 days from the date of appearance of the parties, before the court below.

6. The parties shall appear before the court below on 26.3.2007.

7. In case of any failure on the part of the appellant to pay the cost of Rs.2500/=, as ordered above, this order will not be operative and on the other hand, the order of dismissal of the complaint will be effective on the parties. If the conditions are complied with, and the parties appeared as above, the learned Magistrate shall dispose of the same, at the earliest, and in any case, within four months from the date of appearance of the parties.

Criminal Appeal is allowed as above.

J.M. JAMES,
JUDGE

nj.